

REMARKS/ARGUMENTS

Claims 1-24 remain in this application. Claim 4 has been amended to depend from claim 2. Accordingly, no issues of new matter are believed to be raised by the above amendments to the claims.

Claim Objections

Claims 4, 8, 12, 16, 20, and 24 were objected to under 37 CFR 1.75(c) as being of improper dependent form. See Page 2 of the Office Action. Applicants have amended claim 4 (from which claims 8, 12, 16, 20, and 24 depend) to depend from claim 2. Accordingly, Applicants respectfully request that this objection be withdrawn.

Rejection Under 35 USC 102

Claims 1, 3-4, 13, and 15-16 were rejected under 35 USC 102(b) as being anticipated by Brieva et al. (U.S. Patent No. 6,214,329). See Page 2-3 of the Office Action. Applicants respectfully disagree.

Brieva et al. was patented on April 10, 2001 which was less than a year prior to the August 24, 2001 filing date of the present application. Accordingly, Applicants respectfully request that the above rejection under 35 USC 102(b) is improper and should be withdrawn.

In addition, according to the Office Action, "Brieva et al. clearly disclose a mascara composition comprising non-wax gelling agents, an organopolysiloxane elastomer and silicone oil, wherein the mascara contains reduced levels of wax, or no wax at all." See Page 3 of the Office Action. Applicants, however, do not see where Brieva et al discloses, or suggests, the use of an organopolysiloxane elastomer as required by the pending claims. While Brieva et al. does disclose silicone waxes (e.g., col. 5, line 22), volatile silicone oils (e.g., col. 6, lines 17-63), non-volatile silicone oils (e.g., col. 8, lines 26-32), and silicone surfactants (e.g., col. 11., 33-38), Applicants cannot find where Brieva et al discloses, or suggests, the use of an organopolysiloxane elastomer such as polysilicone-11.

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In addition, Applicants have unexpectedly found that by incorporation of organopolysiloxane elastomer, Applicants were able to develop a mascara that comprises less than about 1%, by weight, of wax. Examples 1 and 2 of the present invention do not even contain any waxes. While Brieva et al. discloses in col. 5, lines 16-19 that the mascara of their invention may comprises between 0.1 and 50% (more preferably 1-35%) of the total composition, they do not disclose mascara's having less than about 1%, by weight, of wax. The only examples taught by Brieva et al. comprise about 2% (w/w%) of rice wax (see examples 1 and 3 of Brieva et al.).

Accordingly, Applicants respectfully request that the above rejection under 35 USC 102(b) be withdrawn.

Rejection Under 35 USC 103

Claims 1-14 were rejected under 35 USC 103 as being anticipated by Brieva et al. See Page 2-3 of the Office Action. Applicants respectfully disagree.

As discussed above, Brieva et al fails to disclose, or suggest, a mascara comprising an organopolysiloxane elastomer as set forth in the pending claims. Accordingly, Brieva et al. also fails to disclose or suggest polysilicone-11, the organopolysiloxane elastomer recited in claims 9-12 and 21-24.

Accordingly, Applicants respectfully request that the above rejection under 35 USC 103(a) be withdrawn.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page(s) is/are captioned "Version with markings to show changes made".

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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



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Dated: May 13, 2002

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Please amend Claim 4 as follows:

4. (Amended) A mascara of claim 32 wherein said mascara further comprises a polyurathane.